

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER 00-0254**  
**SALES AND USE TAX**  
**For Tax Periods: 1997-1998**

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**Issues**

**1. Sales and Use Tax-Printer Ribbons**

**Authority:** IC 6-2.5-3-2 (a), IC 6-8.1-5-1 (b), IC 6-2.5-5-3 (b), 45 IAC 2.2-5-8 (d), Indiana Bell Telephone Co. v. Indiana Department of Revenue, 627 N.E. 2d 1386, Ind. Tax Court (1994).

The taxpayer protests the imposition of tax on printer ribbons.

**2. Sales and Use Tax-Labels**

**Authority:** IC 6-2.5-5-6.

The taxpayer protests the imposition of tax on labels.

**3. Sales and Use Tax-Chemical Solvents**

**Authority:** IC 6-2.5-3-2 (a).

The taxpayer protests the imposition of tax on chemical solvents.

**4. Sales and Use Tax-Incinerator Replacement Parts**

**Authority:** IC 6-2.5-5-30.

The taxpayer protests the imposition of tax on incinerator replacement parts.

## **5. Tax Administration-Negligence Penalty**

**Authority:** IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the negligence penalty.

### **Statement of Facts**

The taxpayer is an Indiana corporation that manufactures and sells religious items to Christian Bookstores throughout the United States. The taxpayer manufactures plaques, framed prints, decorated mirrors, jewelry, cards, stationery and novelty items. After an audit for the years 1997 and 1998, the Indiana Department of Revenue assessed additional sales and use tax, penalty and interest. The taxpayer protested this assessment. A hearing was scheduled for September 26, 2001. Since the taxpayer did not appear for the hearing, this Letter of Findings is based upon the information in the file.

## **1. Sales and Use Tax-Printer Ribbons**

### **Discussion**

Pursuant to IC 6-2.5-3-2 (a), Indiana imposes an excise tax on tangible personal property stored, used or consumed in Indiana. There are several statutory exemptions from the use tax. It is established law that all tax exemptions must be strictly construed against taxpayers. Indiana Bell Telephone Co. v. Indiana Department of Revenue, 627 N.E. 2d 1386, Ind. Tax Court (1994). Therefore the taxpayer bears the burden of showing that the subject labels meet all the tests for qualification for exemption.

Assessments by the Indiana Department of Revenue are presumed to be accurate and taxpayers bear the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

The taxpayer contends that the printer ribbons qualify for exemption pursuant to IC 6-2.5-5-3 (b) as tangible personal property that is directly used in the direct production process of producing a product. 45 IAC 2.2-5-8 (d) defines the direct production process as beginning “at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required.”

Pursuant to 45 IAC 2.2-5-10 (g), items must have a direct and immediate effect on the product being produced to qualify for this exemption. The printer ribbons are used in printers to produce a bar code label that is attached to the product for identification purposes. The bar code labels allow the taxpayer to identify the product throughout the production process. These ribbons do not have a direct and immediate effect on the production of the taxpayer’s product. They do not

change the product or affect the actual production process in any way. Rather, the use of these ribbons allows for inventory control. This is a taxable use.

### **Finding**

The taxpayer's protest is denied.

## **2. Sales and Use Tax-Labels**

### **Discussion**

The taxpayer's second point of protest concerns the imposition of use tax on certain labels. These labels are imprinted with the taxpayer's name and "Made in the USA."

The labels are attached to and become a part of the final product. The taxpayer argues that these labels qualify for exemption as property acquired "for incorporation as a material part of other tangible personal property which the purchaser manufactures, assembles, refines, or processes for sale is his business" pursuant to IC 6-2.5-5-6.

These labels actually become a part of the taxpayer's final product. Therefore they qualify for this exemption.

### **Finding**

The taxpayer's second point of protest is sustained.

## **3. Sales and Use Tax-Chemical Solvents**

### **Discussion**

The audit assessed tax on chemical remover, cleaning fluid, screen wash and ink solvent that the taxpayer purchases from various vendors. The audit report indicates that these items are used to clean the equipment daily to insure that the printed matter is sharp and crisp. Materials purchased for use in routine maintenance and cleaning are subject to the use tax pursuant to IC 6-2.5-3-2 (a).

The taxpayer contends that these materials qualify for the directly used in direct production exemption pursuant to IC 6-2.5-3-2 (a). The taxpayer did not, however, offer any evidence that the materials were used in an exempt manner rather than for routine maintenance and cleaning. Therefore, the taxpayer did not sustain its burden of proof.

### **Finding**

The taxpayer's protest to the tax assessed on chemical solvents is denied.

## **4. Sales and Use Tax-Incinerator Replacement Parts**

### **Discussion**

During the tax period, the taxpayer purchased an element, gasket and temperature control for the incinerator they use to destroy wiping rags used during the production process. The taxpayer contends that these items qualify for exemption from the use tax since they are used in an incinerator required by the Environmental Protection Agency.

IC 6-2.5-5-30 provides an exemption for tangible personal property that is mandated by a governmental agency regulating environmental quality. The taxpayer did not, however, offer any evidence that the Environmental Protection Agency mandated that the taxpayer destroy its wiping rags in this incinerator. Therefore, the taxpayer did not sustain its burden of proof.

### **Finding**

The taxpayer's protest is denied.

### **5. Tax Administration-Negligence Penalty**

Taxpayer's final point of protest concerns the imposition of the ten per cent negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

In this instance, the taxpayer failed to accrue and remit use tax on several items that were prior audit issues. This breach of its duty to properly accrue and remit sales taxes constitutes negligence.

### **Finding**

The taxpayer's final protest is denied.